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Plan Agent*

Honorable Whitman L. Holt
Chapter 11
Hearing Date: January 18, 2023
Hearing Time: 11:00 p.m.
Location: Telephonic

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

In re:

MENSONIDES DAIRY, LLC, and
ART & THERESA MENSONIDES,

Debtors.

CHAPTER 11

No. 18-01681-WLH11 LEAD CASE

No. 18-01683-WLH11

MOTION TO SELL DAIRY
EQUIPMENT AND VEHICLES BY
AUCTION

MOTION

Matthew McKinlay (“McKinlay”), as Plan Agent of the Debtors’ First Amended Joint Chapter 11 Plan of Reorganization [Docket No. 479] (the “Plan”), hereby moves (the “Motion”) this court for entry of an order, pursuant to his authority under the Plan and Order Appointing Plan Agent [Docket No. 959] (the “Plan Agent Order”), to sell certain of the Dairy’s farming equipment (the “Equipment”) and titled vehicles (the “Titled Vehicles”)¹ by auction. Consecutively filed herewith in support of this Motion

¹ A complete list of the Equipment and Titled Vehicles that McKinlay intends to sell by auction pursuant to this Motion is attached hereto as Exhibit B. To the extent that any Missing Equipment (as defined herein) is returned to the Dairy and this Motion is granted, McKinlay reserves the right

1 is the Declaration of Matthew R. McKinlay (the “McKinlay Dec.”). In support of the
2 Motion, McKinlay states as follows:

3 **BACKGROUND**

4 **A. Confirmation of Plan and Rights Under the Plan and Plan Agent Order.**

5 On August 16, 2019, the court entered an Order Confirming the Plan [Docket
6 No. 499]. The Plan included the classification, treatment, and impairment or non-
7 impairment of the Debtors’ creditors’ claims and interests, including AgWest Farm
8 Credit Services, PCA and FLCA (formerly known as Northwest Farm Credit Services,
9 PCA and FLCA, referred to interchangeable herein as, collectively, “Northwest” or
10 “AgWest”). *See* Plan, at Art. 2. In particular, the Plan provided that Northwest’s loans
11 made to the Debtors are secured by “substantially all of the assets of the Debtors”
12 including, among other things, the Debtors’ cattle. *See id.*, at Art. 2.4(b).

13 The Plan also provided that “in the event the Debtors fail to cure any default
14 during any Cure Period, Northwest shall be entitled to immediate appointment of a
15 Plan Agent.” *See id.*, at Art. 2.6(m). Upon default and the subsequent appointment
16 of a plan agent, the Plan Agent “shall have the discretion to adjust operations as
17 necessary to maintain positive cash flow during the marketing period” and that “[a]ny
18 and all collateral sales proceeds (except milk proceeds) received by the Plan Agent
19 shall be paid to [Northwest] in order of lien priority[.]” *See id.* Further, the Plan
20 requires the Plan Agent to “publicly list and make best efforts to sell the assets of the
21 Debtors to pay [Northwest] and other creditors[.]” *Id.* Finally, upon appointment, the
22 Plan Agent is authorized to “engage in any sale process he deems appropriate, and he
23 may accept any offer he determines is in the best interests of the Estate during the
24 Marketing Period², subject to Bankruptcy Court approval of any sale.” *Id.* Failure to

25 _____
26 to file a supplemental notice revising Exhibit B hereto which identifies the returned Missing
Equipment to be sold pursuant to the terms set forth herein.

² The Plan defines the “Marketing Period” as, after the Plan Agent is appointed, the “period of at
least twelve (12) months or until the Dairy is sold, whichever is less.”

1 sell the Debtors' assets during this period entitles Northwest to *in rem* relief to enforce
2 its rights in its collateral. *Id.*

3 Further, the Plan provides that the court retains jurisdiction "to determine all
4 controversies, suits, and disputes that may arise in connection with interpretation,
5 enforcement, and consummation of the Plan" and "such other matters as may be set
6 forth in the Confirmation Order or which arise in connection with the Plan or the
7 Confirmation Order, or may be necessary to effectuate or carry out the purposes and
8 provisions of this Plan." *Id.* at Art. 9.1(g), (j).

9 **B. Debtors' Default Under the Plan and Resulting Appointment of McKinlay**
10 **as Plan Agent**

11 On January 31, 2022, Northwest filed a motion [Docket No. 896] for entry of
12 an order confirming that, among other things, the Debtors have defaulted under the
13 Plan and accordingly that Northwest was entitled to the appointment of a Plan Agent
14 ("Motion for Default").

15 On March 17, 2022, this court entered an order [Docket No. 921] ("Order
16 Confirming Default") granting the Motion for Default and confirming that the Debtors
17 defaulted under Article 2.6(j) of the Plan and failed to cure the default.

18 On May 13, 2022, in accordance with the Order Confirming Default, Northwest
19 filed a Motion for the Appointment of a Plan Agent [Docket No. 927] (the "Plan Agent
20 Motion") seeking to appoint McKinlay as Plan Agent.

21 On July 12, 2022, the court entered the Plan Agent Order appointing McKinlay
22 as Plan Agent. The Plan Agent Order grants McKinlay "exclusive possession and
23 control over all of the Debtors' estates' and property" and authorizes the
24 implementation of a marketing and sale plan for the Dairy as a going-concern. *See*
25 Plan Agent Order, at Art. 5, 8. In addition, the Plan Agent Order provides McKinlay
26 with authority to "[t]o do all things which the Debtors might do in the ordinary course

1 of the operation and business as a going-concern[.]” *Id.* at Art. 5(d) (emphasis added).
2 The Plan Agent Order also provides that McKinlay’s “sale of any or all Dairy Assets,
3 whether assets are . . . sold separately and not as a going-concern, shall be made
4 pursuant to the Plan.” *Id.* at Art. 8(c). Finally, the Plan Agent Order provides that:

5 In the event [that] one or more Triggering Events occur . . . the Plan
6 Agent shall have the discretion as to when, what and how to market and
7 sell the Dairy Assets, ***including the selling or auctioning any and/or all***
8 ***Dairy Assets in separate lots and not as a going-concern***, pursuant to
the terms of the Plan, this Order and further orders of this court.

9 Plan Agent Order, at § 8(b) (emphasis added).

10 C. McKinlay’s Tenure as Plan Agent

11 a. The Mensonides Family’s Bad Acts Require McKinlay to Seek 12 Court Intervention

13 Upon appointment as Plan Agent pursuant to the Plan Agent Order, McKinlay
14 immediately turned his attention to preserving and maintaining the Debtors’ business
15 operations and assets in preparation for the ultimate sale of the Dairy and Dairy Assets.
16 *See* McKinlay Decl., at ¶ 2. However, immediately upon taking control of the Debtors
17 and after certain of the Mensonides family members had rejected his offer to continue
18 working for the Dairy in management roles, McKinlay discovered that the Dairy’s
19 available cash was seriously deficient to fund operations or meet the Dairy’s ongoing
20 financial obligations. *See id.* This required the Plan Agent to expend considerable
21 resources and request and receive additional financial support from Northwest in order
22 to stabilize operations and fund ongoing expenses. *See id.*

23 McKinlay also determined that the Mensonides family had taken substantial
24 actions to disrupt the Dairy’s operations. These actions included, among other things³:

25 _____
26 ³ A more detailed list of the actions that the Mensonides family members had taken immediately
prior to McKinlay’s appointment can be found in the Motion to Enforce the Plan Agent Order
[Docket No. 964] and McKinlay’s Declaration attached thereto as Exhibit 1.

- a) removing critical assets and equipment from the Dairy with the help of third parties such as Narom Berg, Pioneer and others;
- b) withdrawing substantial funds belonging to the Dairy for unauthorized purposes;
- c) leaving almost no feed on site to care for the livestock;
- d) notifying employees that the Dairy was “shutting down” and paying out all accrued paid time-off (PTO); and
- e) Removing and shredding critical business records, including vehicle titles, employee files, the Nutrient Management Plan, and so forth.

See McKinlay Decl., at ¶ 3.

In addition, McKinlay discovered that the Dairy was missing several critical pieces of equipment that collectively held an appraised value of \$467,200.00 (the “Missing Equipment”).⁴ *See McKinlay Decl., at ¶ 4.*

As a result of the aforementioned actions going unaddressed by the Mensonides, on August, 5, 2022, McKinlay filed an Emergency Motion to Enforce the Plan Agent Order Against the Mensonides [Docket No. 964] (the “Enforcement Motion”). The Enforcement Motion identified the problematic actions taken by the Mensonides and sought entry of an order holding the Mensonides in contempt for their failure to comply with the Plan Agent Order.

On August 10, 2022, the court held a hearing on the Enforcement Motion. At the hearing, the court referred the parties to Judge Corbit to attempt to settle their disputes. Unfortunately, mediation with Judge Corbit yielded no tangible results. *See McKinlay Decl., at ¶ 5.*

b. McKinlay’s Problems Operating the Dairy Continue due to the Mensonides and Other Parties’ Actions⁵

⁴ A list of the Missing Equipment can be found in the Motion to Enforce the Plan Agent Order [Docket No. 964] and McKinlay’s Declaration attached thereto as Exhibit 1.

⁵ A more detailed description of the actions taken by McKinlay to retrieve the Missing Equipment

1 While McKinlay was ultimately able to stabilize the Dairy's milk production
2 and milking herd and cleansed the livestock herd of bacillus cereus⁶, McKinlay's
3 problems with the Mensonides and other parties in interest continued. *See* McKinlay
4 Decl., at ¶ 6. In particular, McKinlay began to discover that much of the Missing
5 Equipment had been relocated through one or more of the Mensonides family
6 members' efforts throughout the greater Mabton, Washington area. *See id.* As a result,
7 McKinlay sought to retrieve the Missing Equipment and other property belonging to
8 the Dairy. *See id.*

9 In addition to retrieving Missing Equipment and reviving the Dairy's operations,
10 McKinlay also recognized that removal of the Mensonides' family members from the
11 Dairy would be necessary to implement the sale of the Dairy. *See* McKinlay Decl., at
12 ¶ 7. To begin this process, McKinlay offered a solution that would result in the Art
13 and Teresa Mensonides as well as Auke and Joreen Bruinsma (the "Bruinsmas")
14 consensually vacating the Dairy premises in a reasonable time and manner. *See id.*
15 Unfortunately, the Mensonides and Bruinsma's rejected this offer, prompting
16 McKinlay to obtain a court order confirming his ability to terminate the possessory
17 interests of and initiate eviction proceedings against the Mensonides and Bruinsmas
18 [Docket No. 1027]. *See id.*

19 **c. McKinlay's Decision to Sell the Dairy Assets by Auction**

20 In addition to the above referenced issues, the Dairy also began experiencing

21 _____
22 and handle the problems caused by Narom and Sharon Berg (the "Bergs"), Pioneer Commodities,
23 LLC ("Pioneer") and the Mensonides family can be found in McKinlay's Status Conference Reports
24 [Docket Nos. 983, 989, 999 and 1004] and McKinlay's Reply in Support of the Motion to Sell Certain
25 Dairy Cattle [Docket No. 1039].

26 ⁶ Bacillus cereus is a spoilage microorganism that has been present in the Dairy's herd for several
years. This prevalence of this contaminant exceeded thresholds set by the Northwest Dairy
Association ("NDA"), which limited how the Dairy's milk could be produced. In November 2022,
NDA notified the Plan Agent and his staff that the contaminant had been reduced significantly over
the past four months, and that NDA is now able to expand the number of products that the Dairy's
milk can be used for. This also opens the Dairy to new processing facilities (including the one ~10
miles away from the Dairy in Sunnyside, WA) the Dairy's milk can be sent to.

1 several unrelated problems that were also beyond McKinlay's control. As a result of
2 the worldwide supply chain and inflationary issues, lower than projected 2022 Dairy-
3 grown and harvested feed volume, price gouging and other factors, the Dairy's feed
4 costs exceeded initial projections by roughly 30%. *See* McKinlay Decl., at ¶ 8. This,
5 in addition to unbudgeted manure management freight costs, seriously impacted the
6 Dairy's cash flow. *Id.* Further, milk prices have dropped by roughly 20% over the
7 last several months which has resulted in significantly reduced revenues to the Dairy.
8 *See id.*

9 Given the Dairy's liquidity issues resulting from the foregoing problems,
10 McKinlay determined it was necessary to sell up to 2,500 head of the Dairy's
11 replacement heifer cattle (the "Listed Dairy Cattle") by auction to reduce operating
12 expenses and generate much needed cash to continue operating the Dairy and work
13 towards a sale of the Dairy and its assets. *See id.* at ¶ 9. Therefore, on December 14,
14 2022, McKinlay filed the Motion to Sell Certain Dairy Cattle by Auction Free and
15 Clear of any Liens or Interests [Docket No. 1030] (the "Motion to Sell Cattle").

16 Shortly thereafter, on December 20, 2022, Pioneer filed an objection to the
17 Motion to Sell Cattle. *See* Docket No. 1034 (the "Pioneer Cattle Sale Objection").
18 The Pioneer Cattle Sale Objection primarily objected to the sale of the Listed Dairy
19 Cattle being free and clear of all liens, claims and interests. *See id.* While the court
20 ultimately authorized the sale of the Listed Dairy Cattle, the court deferred ruling on
21 whether or not such sale would be free and clear of all liens, claims and interests to a
22 future date to be determined. *See* Docket No. 1060 (the "Cattle Sale Order")

23 While the sale of the Listed Dairy Cattle will generate much needed cash for the
24 Dairy, operating and administrative costs have continued to strain the Dairy's liquidity.
25 *See* McKinlay Decl., at ¶ 10. Specifically, the rising feed and administrative costs
26 combined with lower revenues have made it difficult to maintain the Dairy's herd. *Id.*

1 McKinlay believes that these problems will only be exacerbated throughout the
2 coming winter months. *Id.* In addition to the foregoing, McKinlay determined that
3 the sale of substantially all of the Dairy Assets to a prospective purchaser under a
4 private sale acceptable terms is becoming less likely. *Id.* As a result, McKinlay
5 decided that the sale of the Dairy's remaining Livestock as part of a broader plan to
6 sell the Dairy's remaining assets, including the Equipment and Titled Vehicles, was in
7 the best interests of the Debtors' estate for the following reasons.

8 As an initial matter, the Dairy's limited cash has constrained McKinlay's ability
9 to both operate the Dairy and pursue a drawn-out sale process. *Id.* at ¶ 11. Thus,
10 McKinlay does not believe that the Dairy can fund the administrative expenses
11 associated with negotiating the terms of an asset purchase agreement and providing a
12 lengthy due diligence period to a potential purchaser for the Dairy Assets. *See id.*
13 Further, any purchaser would likely demand that the sale be free and clear of any liens,
14 interests and claims and McKinlay is unable to guarantee that such a sale would be
15 approved. *Id.* Given these contingencies, McKinlay believes that the sale of the Dairy
16 Assets by auction is in the best interests of the Debtors' estate.

17 Moreover, several "Triggering Events" contemplated by the Plan Agent Order
18 have occurred, thereby activating McKinlay's authority to sell the Dairy Assets by
19 auction, in separate lots and not as a going-concern. *See* Plan Agent Order, at § 8(b).
20 These include:

- 21 1. Defaults in the covenants set forth in Exhibit C – Operational Covenants:
 - 22 a. The Dairy has failed to maintain the total minimum herd size of
23 11,000 head.
 - 24 b. McKinlay has been unable to provide AgWest with the original
25 vehicle titles of all Dairy titled vehicles which are AgWest's
26 collateral due to the fact that the Mensonides family has removed

1 many of these vehicle titles.

2 c. The Dairy has suffered from two consecutive months of negative
3 net income under the CPA compiled financial reports in the months
4 of July and August 2022. As detailed more fully above, the July
5 and August 2022 months net income problems are largely due to
6 the state in which the Mensonides family left the Dairy.

7 2. The Dairy has failed to maintain at least cash flow neutral as measured
8 by the Plan Agent Weekly and Monthly Cash Flow Budget and Variance
9 Reports. *See e.g.*, Docket No. 1004, at p. 4. This is largely due to the
10 increased operating and administrative expenses combined with lower
11 revenues described more fully above.

12 3. The Dairy has lost its normal manure handling and processing capabilities
13 due to the party responsible for handling the Dairy's liquid manure
14 terminating its agreement with the Dairy prior to McKinlay's
15 appointment as Plan Agent. *See* Docket No. 1004, at p. 4.

16 *See* Plan Agent Order, at § 8(b), Exs. C and D; McKinlay Decl., at ¶ 12.

17 McKinlay intends to sell the real property, livestock, feed, Equipment and Titled
18 Vehicles at auction as outlined in Exhibit C. This Motion addresses the proposed
19 auction of the Equipment and Titled Vehicles, and separate motions for orders
20 authorizing the auction sales of the Dairy's feed and real property are filed
21 contemporaneously herewith.⁷

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23 _____
24 ⁷ McKinlay filed the motion to sell the Dairy's remaining livestock by auction on January 6, 2023.
25 *See* Docket No. 1067 (the "Motion to Sell Remaining Livestock").
26

1 **d. McKinlay's Selection of Booker Auctions Co. to Sell the**
2 **Equipment at Auction**

3 Upon determining that the sale of the Dairy Assets by auction was necessary,
4 McKinlay selected Booker Auctions Co. ("Booker") as the auctioneer responsible for
5 selling the Equipment and Titled Vehicles. *See* McKinlay Decl., at ¶ 13. Booker has
6 agreed to a compensation structure whereby it will be paid a 10% commission rate
7 from the auction proceeds, a 5% buyer's premium and certain other expenses incurred
8 in auctioning the Equipment and Titled Vehicles. *Id.* McKinlay believes that Booker's
9 extensive experience auctioning farming equipment and vehicles in the Eastern
10 Washington area will result in the highest and best offers for the Equipment and Titled
11 Vehicles. *See id.*

12 Under the proposed terms of sale for the Real Property, Qualified Buyers (each
13 as defined in the motion to sell real property filed consecutively herewith) will be
14 required to determine whether they are willing to also submit a minimum bid for the
15 entirety of the Dairy's Equipment and Titled Vehicles, as a condition to purchasing the
16 real property. If the buyer of the Real Estate does not purchase the Equipment and
17 Titled Vehicles, Booker will auction off the Equipment and Titled Vehicles on or about
18 March 7, 2023.⁸

19 **RELIEF REQUESTED**

20 By this Motion, McKinlay requests that this court enter an order authorizing the
21 sale of the Equipment and Titled Vehicles by auction held by Booker. McKinlay
22 further requests that the order authorize him, without the need for further court
23 approval, to sell any Missing Equipment that is returned to the Dairy by auction held

24 _____

25 ⁸ As with the Real Property Sale, AgWest is deemed a Qualified Buyer and may credit bid for the
26 assets being sold pursuant to all applicable laws and pursuant to the Plan Agent's determination that
allowing such credit bidding is appropriate, so long as AgWest's credit bidding is limited to
AgWest's collateral. Further, AgWest shall not be required to fund an earnest money deposit to the
extent it submits a credit bid for the Dairy's Equipment, Titled Vehicles, or any other asset that is
AgWest collateral.

1 by Booker. To the extent McKinlay sells any returned Missing Equipment that is not
2 identified in Exhibit B hereto, McKinlay shall submit a supplemental notice revising
3 Exhibit B identifying the returned Missing Equipment to be sold pursuant to the terms
4 set forth herein.

5 McKinlay further requests that any party that McKinlay has determined holds a
6 valid lien superior to Northwest in any particular piece of Equipment or Titled Vehicle
7 be permitted to either (a) retrieve the particular piece of Equipment or Titled Vehicle
8 in satisfaction of such lien, or (b) receive the amount owed to such lienholder or the
9 resulting proceeds from the sale that particular piece of Equipment or Titled Vehicle,
10 whichever amount is less. McKinlay shall provide notice to any party that he can
11 ascertain after a reasonable search holds a lien in any piece of Equipment or Titled
12 Vehicle and present to such lienholder their options on how their security interest may
13 be treated per above.

14 NOTICE OF HEARING

15 The court will conduct a telephone hearing on the **18th day of January, 2023,**
16 **at 11:00 a.m. (Pacific Standard Time)** to determine and rule on the Motion, and any
17 timely filed objection thereto. Any objections must be filed in writing with the U.S.
18 Bankruptcy Court, 904 W. Riverside Avenue, Suite 304, Spokane, Washington 99201
19 and served upon the Plan Agent, Matt McKinlay, 13601 West McMillan Road,
20 Suite 102, PMB 320, Boise, Idaho 83713, and a copy to Jeffrey C. Misley, attorney for
21 the Plan Administrator, Sussman Shank LLP, 1000 S.W. Broadway, Suite 1400,
22 Portland, Oregon 97205 **at or before the hearing on January 18, 2023.** You may
23 also attend the scheduled telephone hearing. Parties shall call into the number below
24 at least ten (10) minutes prior to the start of the hearing. The courtroom deputy will
25 take roll, after which your phone should be placed on mute until your case is called.
26 Once you are finished with your case(s), you may hang up.

1 Conference Number: 1-877-402-9757

2 Access Code: 7036041#

3 If no objection is timely filed and received, McKinlay will ask the court to enter
4 an order approving the Motion, and granting the additional relief requested herein. In
5 the event any party timely objects to the relief requested in this Motion, McKinlay
6 requests that the court consider the objection at the scheduled court hearing noted in
7 this Motion.

8 **POINTS AND AUTHORITIES**

9 Pursuant to the Plan and the Plan Agent Order, McKinlay was specifically
10 retained to sell the Dairy Assets, including the Dairy's Equipment and Titled Vehicles.
11 *See* Plan at Art. 2.6(m); Plan Agent Order at Art. 8. Indeed, once McKinlay determines
12 that a sale of any of the Dairy Assets is "in the best interests of the Estate," he need
13 only obtain court approval to consummate the sale. *See* Plan, at Art. 2.6(m).
14 Moreover, McKinlay's ability to sell the Dairy Assets by auction, in separate lots and
15 not as a going-concern is activated upon the occurrence of any "Triggering Events".
16 *See* Plan Agent Order, at § 8(b). For the reasons set forth below, selling the Equipment
17 and Titled Vehicles by auction is clearly in the best interests of the Debtors' estate and
18 a valid exercise of McKinlay's business judgment.

19 As an initial matter, the Dairy's cash flow problems have limited the options
20 available to McKinlay to sell the Dairy Assets. These cash flow problems are due to
21 a variety of unforeseen circumstances, including significant operating and
22 administrative costs, reduced revenues, and the actions taken by the Mensonides and
23 others to frustrate McKinlay's ability to operate the Dairy on a cash positive basis. *See*
24 McKinlay Decl., at ¶ 14. While McKinlay has taken substantial steps towards
25 mitigating these problems, these efforts have come at a great administrative cost and
26 will likely continue until McKinlay can consummate the sale of the Dairy Assets. *See*

1 *id.* at ¶ 14. As a result, McKinlay has determined that the sale of the Dairy Assets as
2 effectively and efficiently as possible under the circumstances is necessary and
3 believes that the sale of the Equipment and Titled Vehicles by auction held by Booker
4 will help achieve this result. *See id.* Further, McKinlay’s ability to conduct such a
5 sale has been activated by the occurrence of the several “Triggering Events” outlined
6 above. *See* Plan Agent Order, at § 8(b); McKinlay Decl., at ¶ 12.

7 Moreover, McKinlay believes that Booker’s experience auctioning farming
8 equipment and vehicles in the Eastern Washington area will help maximize the value
9 of the Equipment and Titled Vehicles to the benefit of the Debtors’ creditors. *See id.*
10 at ¶ 15. The collective value of the Equipment and Titled Vehicles to be sold by
11 auction is expected to net a substantial recovery for the Debtors’ estate. *See id.*
12 McKinlay believes that this recovery would likely be unattainable if any other sale
13 procedure was used to sell the Equipment and Title Vehicles. In particular, Booker’s
14 experience auctioning assets similar to the Equipment and Titled Vehicles will
15 streamline the process for selling such assets without incurring substantial
16 administrative expenses. *See id.* By contrast, the sale of all of the Dairy’s property
17 on a consolidated basis would require McKinlay to incur much greater administrative
18 expenses and involves several contingencies that may jeopardize the sale altogether.
19 *See id.* Given the Dairy’s cash position, McKinlay has determined that the sale by an
20 experienced auctioneer on a short timeframe will likely yield the greatest recoveries
21 for the Equipment and Titled Vehicles. *See id.*

22 //

23 //

24 //

25 //

26 //

1 **CONCLUSION**

2 Accordingly, and for the reasons set forth herein, McKinlay requests that this
3 court enter an order granting the relief requested herein. A proposed form of order is
4 attached hereto and marked as Exhibit A.

5 Dated this 10th day of January, 2023.

6 SUSSMAN SHANK LLP

7 */s/ Jeffrey C. Misley*

8 By

Jeffrey C. Misley, WSBA 33397
Garrett S. Eggen (Admitted pro hac vice)
Attorneys for Matt McKinlay
in his capacity as Plan Agent

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7
8 IN THE UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 MENSORIDES DAIRY, LLC, and
12 ART & THERESA MENSORIDES,

13 Debtors.
14
15
16
17

CHAPTER 11

No. 18-01681-WLH11 LEAD CASE

No. 18-01683-WLH11

ORDER GRANTING MOTION TO
SELL DAIRY EQUIPMENT AND
VEHICLES BY AUCTION

18 This matter having come before the court on the Motion (the “Motion”)¹ of
19 Matthew McKinlay (“McKinlay”), as Plan Agent of the Debtors’ First Amended Joint
20 Chapter 11 Plan of Reorganization [Docket No. 479] (the “Plan”), for entry of an order
21 authorizing McKinlay to sell certain of the Dairy’s farming equipment (the
22 “Equipment”) and titled vehicles (the “Titled Vehicles”) by auction, pursuant to the
23 Order Appointing Plan Agent [Docket No. 959] (the “Plan Agent Order”), and the
24 court having reviewed the Motion and the supporting Declaration of Matthew
25

26 ¹ Capitalized terms used but not otherwise defined herein shall have the meaning
ascribed to such terms in the Motion or the Plan Agent Order, as applicable.

ORDER GRANTING MOTION TO SELL DAIRY
EQUIPMENT AND VEHICLES BY AUCTION -
PAGE 1

Exhibit A
Page 1 of 3

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McKinlay, and the court's files herein; and this court having jurisdiction and authority over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2)(A) and the Confirmation Order [Docket No. 499] and the Plan Agent Order; and the court finding cause exists to grant certain relief requested in the Motion. Now, therefore, it is hereby

ORDERED:

1. The Motion is GRANTED as set forth herein;

2. McKinlay is authorized to retain Booker Auctions Co. ("Booker") to sell the the Equipment and Titled Vehicles by auction held by Booker;

3. McKinlay is further authorized, without the need for further court approval, to sell any Missing Equipment that is returned to the Dairy by auction held by Booker. McKinlay shall submit a supplemental notice revising Exhibit B to the Motion which shall identify the returned Missing Equipment to be sold pursuant to the terms set forth herein;

4. Booker shall be paid a 10% commission rate from the auction proceeds, a 5% buyer's premium and certain other expenses incurred in auctioning the Equipment and Titled Vehicles;

5. Any party that McKinlay has determined holds a valid lien superior to Northwest Farm Credit in any particular piece of Equipment or Titled Vehicle shall be permitted to either (a) retrieve the particular piece of Equipment or Titled Vehicle in satisfaction of such lien, or (b) receive the amount owed to such lienholder or the resulting proceeds from the sale that particular piece of Equipment or Titled Vehicle, whichever amount is less. McKinlay shall provide notice to any party that he can ascertain after a reasonable search holds a lien in any piece of Equipment or Titled Vehicle and present to such lienholder their options on how their security interest may be treated per above; and

ORDER GRANTING MOTION TO SELL DAIRY
EQUIPMENT AND VEHICLES BY AUCTION -
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Exhibit A
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6. McKinlay is authorized to execute such documents and take such further actions as may be necessary or appropriate to accomplish the terms of this order.

// END OF ORDER //

PRESENTED BY:

SUSSMAN SHANK LLP

By /s/ Jeffrey C. Misley
Jeffrey C. Misley, WSBA #33397
Attorneys for Matthew McKinlay, Plan Agent

***24172-012\PROPOSED ORDER RE MOTION TO SELL EQUIPMENT AND VEHICLES BY AUCTION (04153979);2**

ORDER GRANTING MOTION TO SELL DAIRY
EQUIPMENT AND VEHICLES BY AUCTION -
PAGE 3

Exhibit A
Page 3 of 3

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Mensonides Dairy, LLC

Fixed Asset List

As of November 30, 2022

Asset ID	Purchase Date	Status	Description	Model	Manufacturer	Serial #
I-1	7/1/2006	ACTIVE	TUBGRINDER (LOEWEN 1585) MIXER	V1585S0	LOEWEN	51876
I-2	7/1/2006	ACTIVE	TUBGRINDER (LOEWEN 1585) MIXER	V1585S0	LOEWEN	51875
T-10	12/1/2009	ACTIVE	TRACTOR	9630	JOHN DEERE	1RW9630ET9P016113
L-12	9/29/2017 (active asset 10/1)	ACTIVE	724K LOADER	724K	JOHN DEERE	1DW724KZC HF682408
W-1	12/15/2015	ACTIVE	1978 KW PORTA DRILL TKT-1		KENWORTH	163599S
L-10	4/14/2010	ACTIVE	724K LOADER	724K	JOHN DEERE	1DW724KXH A0628765
L-8	4/14/2010	ACTIVE	724K LOADER	724K	JOHN DEERE	1DW724KXE A0628833
L-9	4/14/2010	ACTIVE	724K LOADER	724K	JOHN DEERE	1DW724KXJ A0628693
T-20	10/16/2014	ACTIVE	TRACTOR (2015)	8270R	JOHN DEERE	1RW8270RH ED097090
T-22	10/9/2014	ACTIVE	TRACTOR (2015)	8270R	JOHN DEERE	1RW8270RA ED096745
L-1	9/15/2008	ACTIVE	624K LOADER	624K	JOHN DEERE	DW624KZ62 2186
CHILLER01	3/11/2014	ACTIVE	CHILLER WITH HEAT TRANSFER	PB250F28R4 550-A-VD	PRO REFRIGERATION, INC	2002610314
CHILLER02	3/11/2014	ACTIVE	CHILLER	PB250F28R4 CL-A-VD	PRO REFRIGERATION, INC	2002620314
H-4	2/28/2012	ACTIVE	EXCAVATOR	240LC	HITACHI	FF01V1Q021 519
L-2	8/25/2005	ACTIVE	624J LOADER	624J	JOHN DEERE	DW624JZ59 9925
O-1	2/9/2009	ACTIVE	DOZER	D8L	CAT	53Y03516
L-3	2/27/2012	ACTIVE	644J LOADER	644J	JOHN DEERE	DW644JX60 5129
L-11	7/26/2010	ACTIVE	544K LOADER	544K	JOHN DEERE	1DW544KZH A0630809
I-29	5/23/2013	ACTIVE	PEECON MIXER	VME400	PEECON	0951-3585
T-9	10/29/2008	ACTIVE	TRACTOR	9430	JOHN DEERE	RW9430P00 4793
T-24	12/17/2014	ACTIVE	MF 9770 SWATHER W/HEAD 9196 (20014)	9770 SWATHER	MASSEY FERGUSON	EHS13322
T-25	2/10/2016	ACTIVE	JOHN DEERE 8235R	8235R	JOHN DEERE	1RW8235RC ED084618

Asset ID	Purchase Date	Status	Description	Model	Manufacturer	Serial #
TR-11	3/1/2005	ACTIVE	36FT COMMERCIAL DELIVERY FEED TRAILER			SBXF-3909-103-0406
TR-9	3/1/2005	ACTIVE	36FT COMMERCIAL DELIVERY FEED TRAILER			SBXF-3903-102-0406
I-10	12/1/2010	ACTIVE	2009 LOEWEN HONEY VAC	5000 H.V	LOEWEN	60595
GEN-3	12/14/2015	ACTIVE	800KW GENERATOR (COMMODITY)2008	APS800	CAT	DWB00637
I-92	1/1/2016	ACTIVE	2270 BIG BALER (2014)	2270 BIG BALER	MASSEY FERGUSON	EHB04262
H-6	11/30/2002	ACTIVE	TELEHANDLER	541-70	JCB	1513029
W-3	12/15/2015	ACTIVE	KTA 280 MUD PUMP	KTA/280	NATIONAL	
W-8	1/11/2016	ACTIVE	JOY AIR BOOSTER			
P-22	8/9/2011	ACTIVE	SUBURBAN	SUBURBAN	CHEVY	1GNSKKE33BR291116
H-3	4/12/2012	ACTIVE	DYNAPAC ROLLER	DYCA362P	CASE	72520702
H-10	1/14/2016	ACTIVE	CALF FEEDER (BULK MILK)	RD-11M	RANDELL EQUIPMENT MFG	11023
I-81	4/16/2008	ACTIVE	PORTABLE END GUN	8400120	BAUER	?
I-3	3/18/2005	ACTIVE	JOHN DEERE GRAIN DRILL	1590	JOHN DEERE	N01590X710592
I-33	5/23/2013	ACTIVE	HAY BUSTER	H-1100E	HAY BUSTER	22-2-29-0044
GEN-2	2/8/2010	ACTIVE	GENERATOR AT SEPERATOR	SR4B 455KW	CAT	3PG01154
MB-12	8/12/2015	ACTIVE	ROGERS MG SERIES AIR COMPRESSOR (MILKBARN)	MG-V-30-125	ROGERS MACHINERY	6519962-1506519962
H-9	5/12/2015	ACTIVE	FORKLIFT (DOOSAN) 2015	D25S-7	DOOSAN	FDA0Q-1930-00609
W-10	1/11/2016	ACTIVE	750/350 AIR COMPRESSORS			
W-9	1/11/2016	ACTIVE	750/350 AIR COMPRESSOR			

Asset ID	Purchase Date	Status	Description	Model	Manufacturer	Serial #
I-93	1/1/2016	ACTIVE	ALLEN 8803 HAY RAKE (2014)	8803 RAKE	ALLEN	14001
T-5	12/15/2006	ACTIVE	TRACTOR	5225	JOHN DEERE	LV5225R323027
EZFEED	3/31/2015	ACTIVE	EZFEED SYSTEM	EZFEED	DHI COMPUTING SERVICE	
F-4	12/19/2011	ACTIVE	FEED TRUCK	2574	INTERNATIONAL	1HTGEAHR2SH677924
H-5	5/25/2004	ACTIVE	SKID STEER	1845C	CASE	JAF0324355
T-1	6/1/2007	ACTIVE	TRACTOR	5225	JOHN DEERE	LV5225R323185
I-32	7/1/2006	ACTIVE	CALF TRAILER			
T-12	5/20/2013	ACTIVE	TRACTOR	5225	JOHN DEERE	LV5225R423361
T-3	1/3/2008	ACTIVE	TRACTOR	5225	JOHN DEERE	LV5225R423425
GEN-1	9/30/1997	ACTIVE	GENERATOR AT MILKBARN		CAT	6FA05514
MB-14	1/13/2016	ACTIVE	WATER SOFTENER (KINETICO CP 213 OD)	KINETICO CP 213 OD	KINETICO	
I-11	4/19/2001	ACTIVE	BRILLION XL PULVERIZER 6J-999	XL-144	BRILLION	180786
T-19	10/9/2014	ACTIVE	TRACTOR (2013)	5055D	JOHN DEERE	1PY5055DLCB005415
M-1	10/17/1996	ACTIVE	MANURE TRUCK	KW900	KENWORTH	5543984
I-18	6/29/2007	ACTIVE	DISC	501DH	CASE	JAG0169066
W-7	1/11/2016	ACTIVE	FORD 8TON 1987	F900	FORD	1FDYT90AXHVA59266
LM-26	8/1/2016	ACTIVE	HOTSY HOT WATER PRESSURE WASHER	1290SSG	HOTSY	11105390-162799 CODE 3116
I-12	8/29/2011	ACTIVE	DEGELMAN 6900 BLADE	16-1HA	DEGELMAN	16-1HA
I-28	8/29/2011	ACTIVE	BLADE 6900 DEGELMAN	16-1HA	DEGELMAN	26784
SP-1	11/21/2014	ACTIVE	WASTE OIL HEATER (REZRA50023065X)	REZRA50023065X 500,000 BTU	REZNOR	BNJRA50023065X
I-80	9/4/2008	ACTIVE	BLADE (D8L)		CAT	
E-1	5/11/2016	ACTIVE	CARRYALL 550 UTILITY	CARRYALL CA550	CLUB CAR	MM1639-680984
H-7	1/13/2009	ACTIVE	DEUTZ / PIONEER PUMP	TCD 914 L 06	DEUTZ	8840866
MB-10	4/17/2014	ACTIVE	UNIVAC WASHER/EXT	UWN045T4V XU4001	UNIMAC	1403016646
MB-11	4/18/2014	ACTIVE	UNIVAC WASHER/EXT	UWN045T4V XU4001	UNIMAC	1403016647

Asset ID	Purchase Date	Status	Description	Model	Manufacturer	Serial #
F-1	1/12/2012	ACTIVE	FEED TRUCK	TRUCK	INTERNATIONAL	1HSLRUGN1EHA55149
MT-22	1/12/2012	ACTIVE	FLATBED	S2200	INTERNATIONAL	1HSZBGTR9KH615212
MT-30	3/15/2001	ACTIVE	GRAVEL TRUCK	2575	INTERNATIONAL	1HSZJJSR1EHA52200
TOOL103	4/24/2012	ACTIVE	HOSE CRIMP MACHINE			
TR-13	12/18/2015	ACTIVE	CONTAINER TRAILER	CONTAINER	CHETA	5EF2GC3098B772455
W-15	10/5/2016	ACTIVE	CHEVY BOXED TRUCK W/LIFT GATE	KODIAK	CHEVY	1GBL7H1M0PJ101010
EZWEIGHTS	6/2/2015	ACTIVE	EZWEIGHTS SYSTEM	EZWEIGHTS	DHI COMPUTING SERVICE	
MB-16	12/6/2016	ACTIVE	BOILER NEXT TO TANK		RAYPAK	1611433740
F-11	1/22/2010	ACTIVE	FEED TRUCK	TRUCK	INTERNATIONAL	1H52B82R5JH534295
F-7	1/22/2010	ACTIVE	FEED TRUCK	8100	INTERNATIONAL	1HSHCAHR1XH218812
F-8	1/22/2010	ACTIVE	FEED TRUCK	TRUCK	INTERNATIONAL	2HSFBJSR9GCA11159
G-3	7/24/2002	ACTIVE	GATOR	GATOR	JOHN DEERE	W004X2X084819
TR-5	5/22/2002	ACTIVE	40' HAY TRAILER		FRUEHAUF	WA7871068
TR-6	5/22/2002	ACTIVE	24' HAY TRAILER		FRUEHAUF	FWT093506
PS-10	11/30/2015	ACTIVE	4" AGI PUMP FOR 12'PIT W/16" PROP			
I-91	10/20/2015	ACTIVE	STRAW SPREADER (4 BALF)		BEDMASTER	BF0629
G-1	8/9/2007	ACTIVE	GATOR	GATOR	JOHN DEERE	W04X2XD014970
I-22	7/1/2004	ACTIVE	LANDPLANE GRADER		LANDPLANE	
ATV-2	8/14/2014	ACTIVE	JOHN DEERE BUCK		JOHN DEERE	MOFGTA5010621
F-10	10/1/2007	ACTIVE	FEED TRUCK	T-800	KENWORTH	18944323
I-20	11/30/2012	ACTIVE	SILAGE RAKE 24 (CUSTOM)			N/A
I-21	11/30/2012	ACTIVE	SILAGE RAKE (CUSTOM)			N/A
W-16	11/18/2016	ACTIVE	DROP DOWN TRAILER 41FT		WHITLOG	GL200WH1TLOG86665
C-1	11/21/2016	ACTIVE	1995 INTERNATIONAL TRUCK	4700	INTERNATIONAL	1HTSCABM5SH654067
LM-25	4/21/2015	ACTIVE	ELECTRIC PALLET JACK	7HBW23	TOYOTA	7HBW23-56434

Asset ID	Purchase Date	Status	Description	Model	Manufacturer	Serial #
TOOL70	1/31/2014	ACTIVE	AC/DC WELDER - 11,000 WATT GEN	BOBCAT 250 W/SUBARU ENGINE	MILLER	MD341026R
TR-7	3/12/2012	ACTIVE	FLATBED 40'		FRUEHAUF	
TR-8	3/13/2012	ACTIVE	FLATBED 20'			
LM-28	10/10/2016	ACTIVE	RANGER 225 WELDER	225 RANGER	LINCOLN	U1160503310
MB-13	8/7/2015	ACTIVE	ZEKS HEATSINK AIR DRYER (MILK BARN)	125-HSH-A100	ZEKS G SERIES	WCH1002379
TOOL106	5/14/2015	ACTIVE	LINCOLN 225 RANGER WELDER	225 RANGER	LINCOLN	U1150208334
I-7	4/30/2004	ACTIVE	JOHN DEERE RIPPER	915	JOHN DEERE	N00915X005621
TANK-1	3/3/2014	ACTIVE	MOLASSES TANK			
TANK-2	3/3/2014	ACTIVE	MOLASSES TANK			
FREEZER3	10/28/2015	ACTIVE	ATOSA FREEZER (HOSPITAL)	MBF8503	ATOSA	MBF8503150408C4001
LM-24	1/2/2015	ACTIVE	PLATE COMPACTOR (WACKER)	WP1550AW	WACKER	30071964
LM-21	12/8/2014	ACTIVE	AIR COMPRESSOR ROLAIR 11HP	11GR30HK30	ROLAIR SYSTEMS	14110003
M-39	2/15/2013	ACTIVE	MANURE TRUCK	9370	INTERNATIONAL	2HSFBJSRXGCA11154
PS-9	3/3/2014	ACTIVE	2" GEAR PUMP MOLASSES			
LM-23	12/9/2014	ACTIVE	HONDA GENERATOR	EG5000CL	HONDA	EBEC-1005761
W-11	5/11/2016	ACTIVE	LIGHT TOWER	04000AL2-S-4MH	AMIDA TEREX	AL407-000572
W-12	5/11/2016	ACTIVE	LIGHT TOWER	AL406D1-S-4MH	AMIDA TEREX	GTF-23788
LM-22	12/8/2014	ACTIVE	2.0HP AIR COMPRESSURE FLE	6820K17-0003	ROLAIR SYSTEMS	14030457
TOOL99	11/17/2014	ACTIVE	LINCOLN 180 DUAL POWER MIG WELDER	180C	LINCOLN	M3140808527
TOOL104	4/24/2015	ACTIVE	3/4 IMPACT GUN			
I-31	12/31/2007	ACTIVE	CALF TRAILER RFD FRAME			N/A
I-87	12/31/2007	ACTIVE	BLACK FRAME CALF TRAILER		UNKNOWN	N/A

Asset ID	Purchase Date	Status	Description	Model	Manufacturer	Serial #
TOOL105	4/20/2015	ACTIVE	12"SLIDING COMPOUND MITER SAW (DEWALT)	DWS782	DEWALT	?
LM-18	4/5/2007	ACTIVE	HONDA EDGER	HHE31CA EDGER	HONDA	MADA-1004211
TOOL110	10/2/2015	ACTIVE	1/4 IMPACT GUN		DEWALT	794157
TOOL109	10/2/2015	ACTIVE	3/8 IMPACT GUN 20 VOLT	DCF883	DEWALT	964969
Misc	Misc		Miscellaneous other dairy equipment, vehicles, implements, shop tools, supplies, and so forth			

Mensonides Dairy, LLC

Asset Auction Strategy

January 3, 2023

Asset	Broker	Auction Date	Closing / Delivery Date	Comments
Real Property	Skye Root	2/10/23 (Qualifying Deadline 2/20/23 (Auction Date))	3/14/2023	The Calf Ranch and the Main Dairy may be sold together or separately.
Milk Base	N/A			Buyer of real property (main dairy) will have rights to apply for the Dairy's milk Base with Northwest Dairy Association.
Feed Inventory	Skye Root	2/20/2023	3/14/2023	Buyer of real property will be given the option to purchase feed inventory at market value. Otherwise, will be sold separately.
Equipment	Booker Auctions	3/7/2023	3/14/2023	Qualified Buyers may submit interest to purchase all equipment by 3/1/23. Otherwise lots to be auctioned by 3/7/23.
Livestock - Heifers	Toppenish	Various - 1/19 - 1/31/23		Auctioned weekly
Livestock - Milk Cows	Toppenish		2/21/23 through 3/14/23	Buyer of real property will be given the option to purchase Milk Cow inventory at market value. Otherwise, will be sold by Toppenish Livestock.
NDA Coop Shares	NO AUCTION			Non-transferrable. Will remain with the Plan Agent.

1 CERTIFICATE OF SERVICE

2 I, Janine E. Hume declare as follows:

3 I am employed in the County of Multnomah, state of Oregon; I am over the
4 age of eighteen years and am not a party to this action; my business address is 1000
5 S.W. Broadway, Suite 1400, Portland, Oregon 97205-3089, in said county and state.

6 I certify that on January 10, 2023, I served the **MOTION TO SELL DAIRY**
7 **EQUIPMENT AND VEHICLES BY AUCTION** on all ECF participants as
8 indicated on the Court's Cm/ECF system.

9 I swear under penalty of perjury that the foregoing is true and correct to the
10 best of my knowledge, information, and belief.

11 Dated: January 10, 2023.

12
13 /s/ Janine E. Hume
14 Janine E. Hume, Legal Assistant
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